

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FREDRICK LEE CHRISTOPHE,

Plaintiff,

v.

T. NUNN,

Defendant.

Case No. C19-519-BJR-MLP

ORDER RE-NOTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

This is a civil rights action proceeding under 42 U.S.C. § 1983. Currently pending before the Court is Defendant's motion for summary judgment. (Dkt. # 34.) That motion was originally noted by Defendant for consideration on July 10, 2020. (*See id.*) On July 7, 2020, the Court received from Defendant a motion seeking to continue the noting date of his summary judgment motion as an accommodation to Plaintiff whose receipt of Defendant's motion papers was delayed as a result of a change of address. (Dkt. # 41.) Defendant requested, on behalf of both parties, that his summary judgment motion be re-noted for consideration on July 24, 2020. (*Id.*)

On July 22, 2020, the Court received from Plaintiff what appears to be a response to Defendant's summary judgment motion, though the submission also appears to request the Court's assistance in obtaining evidence necessary to support Plaintiff's civil rights claims and to

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1 oppose summary judgment. (Dkt. # 43.) On July 30, 2020, Defendant filed a reply brief in
2 support of his motion for summary judgment in which he requests that Plaintiff's response be
3 stricken because it was submitted outside the deadline proposed in the earlier motion to re-note
4 Defendant's summary judgment motion. (Dkt. # 44.)

5 On August 5, 2020, a request by Plaintiff for an extension of time to obtain medical
6 records was posted on the docket and noted for consideration on August 14, 2020.¹ Defendant
7 filed a response opposing the requested extension. (Dkt. # 46.) Defendant observes in his
8 response that Plaintiff previously requested, and was granted, additional time to obtain
9 documents necessary to prove his claim. (*Id.* at 2, citing Dkt. ## 30, 32, 33.) Defendant also
10 argues that Plaintiff has made no showing that he diligently attempted to obtain these records and
11 that this is fatal to his request for a continuance. (*Id.*)

12 The Court concurs that any extension of the discovery deadline at this point is
13 unwarranted. Plaintiff has had ample time during the pendency of this action to obtain the
14 records necessary to support his claims and has apparently not done so, as evidenced by his
15 request in his response to Defendant's summary judgment motion that the Court assist him in
16 this endeavor. The Court is not in a position to assist Plaintiff in procuring evidence, nor is the
17 Court persuaded that Plaintiff, through the exercise of reasonable diligence, could not have
18 secured the necessary evidence on his own. The discovery period in this matter closed in May
19 2020 and it will remain closed. The Court will, however, re-note Defendant's summary judgment
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22 ¹ Plaintiff's request was apparently received by the Clerk's Office sometime in March 2020, but the
23 document contained no file stamp indicating the exact date it was received. The document was posted on
the docket on August 5, 2020 and was assigned a noting date consistent with the posting date.

1 motion, pursuant to the request of the parties, and will accept for filing Plaintiff's response to
2 Defendant's motion even though it was filed after the deadline proposed by the parties.

3 Based on the foregoing, this Court hereby ORDERS as follows:

4 (1) Defendant's motion to re-note his motion for summary judgment (dkt. # 41) is
5 GRANTED. The Clerk is directed to RE-NOTE Defendant's summary judgment motion (dkt. #
6 34) on the Court's calendar for consideration on July 31, 2020, the Friday following receipt of
7 Defendant's reply brief. The Court will issue a ruling on Defendant's summary judgment motion
8 in due course.

9 (2) Plaintiff's request for additional time to complete discovery (dkt. # 45) is
10 DENIED.

11 (3) The Clerk shall provide copies of this Order to Plaintiff, to counsel for Defendant,
12 and to the Honorable Barbara J. Rothstein.

13 DATED this 24th day of August, 2020.

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16 MICHELLE L. PETERSON
United States Magistrate Judge